

absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997).

Applicants previously note that claims 1, 4, 14-15, 17-20 and 22-23, recite, *inter alia*, “electronically evaluating whether the seller has complied with the seller’s obligations as defined by the purchase order agreement.” (emphasis added).

On Page 3 of the present Office Action, the Examiner indicates that Conklin discloses this limitation in numerous locations, including: Fig. 1(g), element 58; Fig. 8 elements 580 and 585; Figures 15a – 23; Fig. 30; column 15, lines 7-12; column 27, lines 6-10 and Fig. 16. Additionally, the Examiner indicates in the Response to Arguments section beginning on page 12 into page 13, providing further recitation of the original support citations and further discussion of Fig. 1(g) and the new citation of col. 31, lines 40-53 relating to the buyer requesting a sample element from the buyer. Applicants respectfully disagree with the Examiner’s assertions and for the reasons stated below, submit this rejection is improper.

As discussed in the response filed March 16, 2006, Conklin is at its very essence a **system for negotiating commercial contracts**. For example, col. 13, line 66 – col. 14, line 26, succinctly discloses the Conklin system as a “multivariate negotiations engine for iterative bargaining.” The rest of this passage specifically points out that the Conklin system is used to create a central location for negotiating a contract, including maintaining “internal databases that contain the history of all transactions in each community, so that sponsors, buyers and sellers may retrieve appropriate records to document each stage of interaction and negotiation.” (col. 14, lines 21-25). By contrast, the Conklin system does not disclose business processes **beyond** the original contract negotiation.

Applicants herein specifically addresses each of the Examiner’s asserted supporting positions:

Fig. 1(g), element 68

Fig. 1(g) is described on col. 15, lines 49-50 as “a block diagram showing some of the main interactions enabled by the present invention.” Element 68 includes the box under the Sponsor Process including the text “Deal Concluded & Archived.” Col. 19, lines 47-48 clarifies that “[o]nce a deal is concluded it is archived 68, by multivariate negotiations engine 212 on behalf of seller.” This passage does **not** assert that the Conklin system “electronically evaluates whether the seller has complied with the seller’s obligations as defined by the purchase order agreement,” rather this passage merely states that a “deal,” which includes the negotiated terms, can be stored by the engine 212.

For further clarification of this passage, Applicants direct the Examiner to the previous discussion regarding Fig. 1(g), specifically col. 19, lines 28-37. This passage describes “order activity 58 which allows the seller to follow activity by e-mail or browser or similar means, and request data downloads or activity reports on transaction data.” (col. 19, lines 34-37). As to the term “transaction data,” Conklin is unclear as to whether this transaction data relates to the procurement and shipment of goods and services or to stages of negotiations. Regardless of this lack of distinction, it is clear that again Conklin does not disclose “electronically evaluating whether the seller has complied with the seller’s obligations as defined by the purchase order agreement,” because, among other reasons, the disclosed Conklin system only states “concluded & archived,” which does not expressly include any step of electronic evaluation by the Conklin system.

Fig. 8, elements 580 and 585

Fig. 8 illustrates a flowchart of the reporting features of the Conklin system while the specification of Conklin omits any discussion of Fig. 8, elements 580 and 585.

Looking specifically at Fig. 8, box 570 states that “[s]ellers may view their transaction records from pending to final sales ... Orders are held in this pending database until they are closed and archived by the Seller.” (emphasis added). Step 580 is merely a decision block indicating whether the negotiated element(s) has(ve) been shipped and if so, step 585 indicates that the “[o]rder is marked as shipped in the database” and this information is available to the Seller.

Fig. 8, elements 570, 580 and 585 are nothing more than reporting functions relating to the various stages of the reports 211-02. Fig. 8 and the specification do not indicate that if the product is shipped, any shipment information is compared to negotiated contract information, rather step 580 merely states that the order “is marked as shipped.” Allowing a user to view transaction records and mark an order as shipped in the database and making this information available to the seller is wholly inconsistent with “electronically evaluating whether the seller has complied with the seller’s obligations as defined by the purchase order agreement,” because the Conklin system does not provide any disclosure of any electronic evaluation of the seller’s compliance with the defined obligations.

Figs. 15a-23

Figures 15a – 23 illustrate various sample usage screens of the Conklin system. These figures merely illustrate the iterative nature of negotiations, the primary purpose of the Conklin system. Figure 15a, while missing any supporting discussion in the specification, merely illustrates a sample screen shot of accounts waiting for the seller’s approval. This

screen shot does not disclose the Conklin system “electronically evaluating whether the seller has complied with the seller’s obligations as defined by the purchase order agreement.”

Figures 15b-23 illustrate different processing screen shots and sample electronic mail communications to different parties. The Examiner-cited figures merely illustrate input and output information processed through the Conklin system. For example, box 370 in Fig. 16 states the attached is “a proposed Letter of Credit from ABC, Inc.” upon which the seller may approve or edit various fields. Figs. 17-23 illustrate nothing more than the text of sample emails that can be transmitted between the contract parties, including an automated message that a sample item has been shipped (Fig. 23). These sample screen shots and sample email texts do not disclose “electronically evaluating whether the seller has complied with the seller’s obligations as defined by the purchase order agreement,” but rather merely relate to the negotiation of contracts.

Figure 30

Figure 30 illustrates a wire transfer instruction sheet which is to be printed out and taken to a bank for making a wire transfer payment. This screen shot and the accompanying disclosure on col. 27, lines 26-31 do not disclose “electronically evaluating whether the seller has complied with the seller’s obligations as defined by the purchase order agreement,” but rather only provides pre-formatted paperwork for being printed and provided to the buyer’s bank and Conklin does not disclose an electronic evaluation to generate the sheet.

Col. 15, lines 7-12

The Examiner-cited passage states as follows:

“Still another aspect of the present invention is that sponsors can perform many more functions, such as establishing standards, basic contract terms for the community (if desired), removing non-compliant participants, changing the structure of the seller and buyer databases, and so on than existing systems allow any administrator to perform.”

This passage clearly and succinctly delineates steps that the “sponsor” can perform, such as removing non-compliant participants. This passage does not disclose “electronically evaluating whether the seller has complied with the seller’s obligations as defined by the purchase order agreement,” because, among other reasons, the sponsor being able to remove non-compliant participants and the subsequent removal of participants is **not an electronic evaluation**. The Examiner-cited passage does not state that the Conklin system evaluates participant actions, but merely states that if a party is non-compliant, a sponsor has the ability to remove the participant.

Col. 27, lines 6-10

This cited passage states as follows:

In a proposed letter of credit, such as that shown in FIG. 16, the buyer's bank assumes the full credit risk, and is absolutely obligated to pay the seller, provided the seller ships goods in a way that conforms in every detail to the terms of the letter of credit.

This passage does not support the proposition the Conklin system “electronically evaluates whether the seller has complied with the seller’s obligations as defined by the purchase order agreement,” because this passage states nothing more than the known existing *modus operandi* for the use of letters of credit, with reference to the sample letter of credit illustrated in Fig. 16. The cited passage does not disclose that the Conklin system performs any electronic evaluation, which is outside of the scope of the Conklin system being an iterative negotiation system.

Col. 31, lines 40-53

This Examiner-cited passage discloses the shipment of samples by a seller to a buyer. In the Conklin system, the seller states it is willing to send sample orders for a predetermined price. The buyer may then request a sample, whereupon the Conklin system sends a notification (as shown in Fig. 23) that a sample has been requested. Whereupon, the seller then sends the sample to the buyer. The Examiner-cited passage also discusses that different payment means may be utilized.

This passage does not disclose that the Conklin system “electronically evaluates whether the seller has complied with the seller’s obligations as defined by the purchase order agreement,” for numerous reasons. First off, the transaction of a sample is not a condition of a purchase order agreement, but rather a service the seller offers to provide as a condition for using the negotiation system. Secondly, the Conklin system merely facilitates the sample transaction by sending notifications to each party. As discussed above regarding the Figs. 15a – 23, these notifications are merely electronic messages transmitted through the Conklin system and do not provide the basis for any “evaluation” of the Conklin system relative to the terms of a negotiated purchase order agreement.

In support of this present rejection, the Examiner cites to 13 different figures and 3 separate passages in Conklin. Applicants respectfully submit that, as noted above, none of these figures and passages support the assertion that Conklin discloses “electronically evaluating whether the seller has complied with the seller’s obligations as defined by the

purchase order agreement.” Rather, all of these figures and passages support the primary function of the Conklin system, which is the negotiation of the underlying contract between parties.

In the response to arguments section, the Examiner asserts further positions regarding Applicants’ position that Conklin fails to disclose “receiving and storing electronic evidence that the seller has performed in connection with fulfilling the seller’s obligation as defined by the purchase order agreement as modified by any modifications.” Applicants respectfully disagree and therefore traverse the Examiner’s position. Conklin does not disclose “electronic evidence” that any party has complied with the terms of the negotiated contract, but rather as stated above, the Conklin system merely provides the iterative negotiation of the contract and a central location for inter-party correspondences after the contract has been negotiated. Even in view the Examiner’s broad definition of the term “evidence,” Conklin is silent as to receiving and store electronic evidence for performance relating to seller’s obligation, but rather merely facilitates cross-party communication, such as the various screen shots and sample email messages of Figs. 15-23.

The Conklin system is a completely different system, which is a central online negotiation system allowing for and tracking multiple iterations of a negotiated contract. The Conklin system operates in a completely different manner, which is allowing parties to negotiate a contract on the central server. The Conklin system generates a completely different result, which is a centrally stored master contract and storage of the iterations of that contract.

Therefore, Applicants respectfully submit the rejection is improper and should be withdrawn.

Regarding claims 2-3, 5-13, 16 and 21, these claims depend from independent claims 1, 4, 15 and 20, respectively, and recite further patentable subject matter in view thereof. Therefore, for at least the reasons stated above as to claims 1, 4, 15, 20 and 22-23, claims 2-3, 5-13, 16 and 21 are also patentable.

CONCLUSION

In light of the foregoing, Applicants respectfully submit that all of the pending claims 1-23 are in condition for allowance. It is therefore respectfully requested that the rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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